

LAWS6009: Evidence

Newcastle City Precinct
Semester 1 - 2024



OVERVIEW

Course Description

This course is a detailed exploration of the legal rules governing the adducing of evidence and proof of facts in civil and criminal trials. There will be critical analysis of the theoretical underpinnings of evidence law as used in common law adversarial systems and in particular, case theory and the reasoning process that allows inferences to be drawn from evidence to prove facts. Students will critically analyse the underlying principles for the rules and practices that inform legal fact-finding.

The course is based on the 'Uniform Evidence Law' with the main focus on the *Evidence Act 1995* (NSW). Reference will also be made to the counterpart *Evidence Act 1995* (Cth) and particularly to where there are differences in provisions of the legislation. Students will apply specialised cognitive and technical skills to critically analyse the limits of regulation and logical fact-finding in the analysis and interpretation of what are, to the layperson, somewhat instinctual responses to evidence given at trial.

Skills Focus

This course will focus on assisting students to develop the following skills:

- Listening skills
- Oral communication – legal and non legal audiences
- Collaboration

Requisites

Students must be active in the Juris Doctor/Grad Dip Legal Practice [12334] or Master of Laws [12333] program and have successfully completed the following courses:

LAWS6000 AND LAWS6001 AND
LAWS6120 and LAWS6121 AND
LAWS6130 AND
LAWS6140 and LAWS6141.

Contact Hours

Newcastle City Precinct

Online Activity

1 hour(s) per Week for 12 Weeks

Seminar - Face to Face On Campus

2 hour(s) per Week for 12 Weeks

Tuesday 8am to 10am in Room X-205 OR

Tuesday 5pm to 7pm in Room X-202 OR

Wednesday 10am to 12noon in Room X-205

Unit Weighting

10

Workload

Students are required to spend on average 120-140 hours of effort (contact and non-contact) including assessments per 10 unit course.

COURSE OUTLINE

CONTACTS

Course Coordinator Professor John Anderson - **Newcastle City Precinct**
John.Anderson@newcastle.edu.au
02 49217099
Consultation: by email or by appointment during semester

Teaching Staff Dr Stephenson Chow
Stephenson.Chow@newcastle.edu.au
02 40550909
Consultation by email or by appointment during semester

Other teaching staff may be assigned and, if so, students will be advised via the course Canvas site

School Office **The School of Law and Justice**
Level 5
NU Space
409 Hunter Street
Newcastle
Law-School@newcastle.edu.au
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SYLLABUS

Course Content The topics in this course include but are not limited to:

1. The Roles of Judge and Jury
2. Burden and Standard of Proof / Presumptions
3. Witnesses and Privileges
4. Adducing Evidence: Examination of Witnesses and Unreliable Evidence
5. The Hearsay Rules
6. Opinion Evidence / Documentary and Real Evidence
7. Admissions and Confessions / Judgments and Convictions
8. Credibility and Character
9. Tendency and Co-incidence Evidence
10. Identification Evidence.

Course Learning Outcomes **On successful completion of this course, students will be able to:**

1. Demonstrate advanced and integrated understanding of the principles and rules of evidence law used in the process of fact-finding in both civil and criminal litigation.
2. Use legal analysis effectively in demonstrating a specialised working knowledge and application of the relevant principles and rules of evidence law to a range of factual problems.
3. Critically evaluate the way in which the rules of evidence operate and are applied in the context of the trial process.
4. Demonstrate highly effective communication skills in oral seminar discussions and the written presentation of assessment tasks based on the course materials.

Course Materials **Prescribed Text:**
John Anderson, *Uniform Evidence Law: Text and Essential Cases* (Federation Press, 4th edition, 2021) [UEL4ed]

SCHEDULE

Week	Seminar Class Dates	Topic	Required Reading from UEL4ed	Further Required Reading – Evidence Act 1995 (NSW)
1	27 & 28 February	1. Getting into Evidence	Intro pp 1-11 Ch 1 pp 12-40	Part 3.1 ss 55-58 Part 4.2 ss 143-145
2	5 & 6 March	2. The Roles of Judge and Jury	Ch 2 pp 41-58 Ch 4 pp 108-163	Part 3.11 ss 135-139. Ch 5 ss 189, 192-192A
3	12 & 13 March	3. Burden and Standard of Proof / Presumptions	Ch 3 pp 59-107	Part 4.1 ss 140-142 Part 4.3 ss 146-162
4	19 & 20 March (Census Friday 22 March)	4. Witnesses and Privileges	Ch 5 pp 164-234	Part 2.1 ss 12-24A Part 3.10 ss 117-134 Ch 5 s 187
5	26 & 27 March	5. Adducing Evidence (a) Examination of Witnesses (b) Failure to give evidence (c) Corroboration and Unreliable Evidence	Ch 6 pp 235-314	Part 2.1 ss 20, 26-46 Parts 4.4 & 4.5 ss 164 - 165B.
6	2 & 3 April (Easter, University Holiday)	NO SEMINAR CLASSES	ASSESSMENT TASK 1- MULTIPLE CHOICE QUIZ	AVAILABLE ONLINE: 9.00am – 9.00pm Thursday 4 April 2024
7	9 & 10 April	6. The Exclusionary Rules: (a) Hearsay	Ch 8 pp 348-457	Part 3.2 ss 59-75
Mid-Semester Recess 15-26 April				
8	30 April & 1 May	6. (b) Opinion Evidence (c) Documentary and Real Evidence	(a) Ch 9 pp 458-510 (b) Ch 7 pp 315-347	(a) Part 3.3 ss 76-80 (b) Part 2.2 ss 47-51 Part 2.3 ss 52-54 Part 4.6 ss 166-169
9	7 & 8 May	6. (d) Admissions (e) Judgments and Convictions	(d) Ch 10 pp 511-572 (e) Ch 11 pp 573-588	(d) Part 3.4 ss 81-90, Part 3.11 ss 138-139 (e) Part 3.5 ss 91-93
10	14 & 15 May	6. (f) Credibility (g) Character	(f) Ch 12 pp 589-639 (g) Ch 13 pp 640-666 ASSESSMENT TASK 2- PROBLEM SOLVING EXERCISE due 17 May	(f) Part 3.7 ss 101A- 108C (g) Part 3.8 ss 109-112
11	21 & 22 May	6. (h) Tendency and Coincidence	Ch 14 pp 667-770	Part 3.6 ss 94-101
12	28 & 29 May	6. (i) Identification Evidence	Ch 15 pp 771 – 806	Part 3.9 ss 113 –116
13	4 & 5 June	NO SEMINAR CLASSES	STUDY WEEK	Revise Topics for Exam as advised
Semester 1 Examination Period: 11 – 22 June				

COMPULSORY REQUIREMENTS

In order to pass this course, each student must complete the following compulsory requirements:

Contact Hour Requirement:

There is a **compulsory attendance requirement in this course**. Attendance at all seminar classes will be monitored and records maintained by the Course Coordinator. In order to satisfy the "Attendance" requirement, students must be present at a minimum of 80% of scheduled classes as spelled out in the course outline, unless they are able to demonstrate that their absence falls within the University's Adverse Circumstances policy. Unless this requirement is met, despite marks awarded in other assessment items, the student will receive a zero mark and an CF grade for the course.

PLEASE NOTE that meeting the attendance rule each week requires meaningful attendance for the **full one hour and fifty minutes of each class**. Partial attendance will not meet the attendance requirement for a given class unless prior approval has been given by the Course Coordinator or Lecturer. (To be clear, simply being present for purposes of the roll call does not on its own satisfy the attendance requirement. As such, even if you have been present for the roll call, if you leave early without permission you are agreeing that your attendance will not count for that week.)

NOTE also that if you miss more than 2 classes for reasons that fall within the University's adverse circumstances policy you may be required to complete additional assessment items to ensure that you have completed the required volume of learning for this course.

ASSESSMENTS

This course has 3 assessments. Each assessment is described in more detail in the sections below.

	Assessment Name	Due Date	Involvement	Weighting	Learning Outcomes
1	Online Multiple Choice Quiz	Made available on Canvas on Thursday 4 April [Week 6] (to be completed in 90 minutes maximum)	Individual	20%	1, 2
2	Mid-Semester Problem Solving Exercise	Problem question released 4.00pm Friday 3 May (Week 8). Answers due 9.00pm Friday 17 May (Week 10)	Individual	30%	1, 2, 3, 4
3	Formal Open-Book Examination	Date to be advised during Semester 1 Examination Period 11 – 22 June	Individual	50%	1, 2, 3, 4

Late Submissions

The mark for an assessment item **submitted after the designated time on the due date**, without an approved extension of time, will be reduced by 10% of the possible maximum mark for that assessment item for each day or part day that the assessment item is late. Note: this applies equally to week and weekend days.

Exceeding Word Limit [See The School of Law and Justice, *Style Guide on Written Assessment Items*]

Where a **word limit** is set for an assessment item it **must not be exceeded**.

1. Students must accurately record the word count on the written assessment item cover sheet. Please note that *Turnitin* also reports a word count for any task submitted through that software.
2. The word count identified in the Course Outline is the absolute word limit for an assessment task. **If a written assessment item exceeds the word limit, the marker will not read beyond the word limit. Any material beyond the word limit will not be considered in assessing the quality of the assessment item.**
3. Footnotes and any bibliography are not included in the word count. However, footnotes must only be used for the purposes of providing references. Footnotes which add commentary will be included in the word count for the written assessment item.

School Assessment Board Approval of Results

To ensure that grades are fair both within and between courses and cohorts, the School of Law and Justice has a rigorous policy of moderating and reviewing assessment. The School Assessment Board (SAB) reviews all final grades before they are released to students, and the SAB process may result in the overall marks of a class being moved up or down by a specific amount, thus impacting individual marks. This is consistent with grading practices in other Law Schools across the country and important to ensure the integrity of assessment. This means that the final grade you are awarded may not be the sum of marks you have received in all assessments.

Assessment 1 –

Online Multiple-Choice Quiz

Assessment Type

Online Quiz

Description

The purpose of the quiz is to test student knowledge and understanding of the material set for study during Weeks 1, 2, 3 and 4 of the course and their ability to apply that knowledge and understanding in an integrated way through analysis of a range of factual problems. Students demonstrate advanced and integrated knowledge and understanding of the framework, principles and concepts of evidence law from the course materials and the application of the framework, principles and concepts to a range of factual problems through answers to 15 multiple choice questions in a limited time frame (10 questions worth 1 mark each and 5 questions worth 2 marks each). The duration of the quiz will be 90 minutes.

Questions are randomly selected from the question bank and will involve a test of student knowledge and understanding of the course materials set for study in Topics 1 to 4 (Weeks 1, 2, 3 and 4). Questions include hypothetical problem questions which will require students to apply lateral thinking and legal analysis to solve problems by selecting the most accurate answers in the context of specific factual problems relating to the framework, principles and concepts of evidence law in the trial process.

Weighting

20%

Due Date

Made available on Canvas on Thursday 4 April 2024 [Week 6] at 9.00am for a period of 12 hours (to be completed in 1 hour 30 minutes maximum)

Submission Method

Online

Assessment Criteria

1. Advanced and integrated knowledge and understanding of the principles and rules of evidence law used in the process of fact-finding in both civil and criminal problem scenarios.
2. Ability to effectively analyse and apply relevant principles and rules of evidence law to decide the most accurate answer in a range of factual scenarios demonstrating a specialised working knowledge and application of these principles and rules.
3. Ability to provide accurate answers in the context of a time limited multiple choice quiz.

Return Method

Results of the quiz as a mark /20 will be published in the Grade Centre at the course Canvas site.

Feedback Provided

Upon request for an individual consultation following publication of results.

Assessment 2

Assessment Type

Problem Solving Exercise

Written Assignment – maximum of **1000 words**

Description

The purpose of this assignment is to assess students' progressive knowledge and integrated understanding of the principles and rules of evidence law used in the process of litigation fact-finding together with critical evaluation of the way in which these rules of evidence operate and are applied in the context of the trial process. Provided with a factual problem, students engage in legal analysis and effectively apply the relevant evidentiary principles and rules to the problem. They apply lateral thinking and analytical problem solving skills to formulate alternative legal strategies and at least tentatively resolve the issues to demonstrate specialised working knowledge and application of the relevant principles and rules of evidence law. They effectively communicate in writing through a synthesis and analysis of primary and secondary legal materials in the context of solving an evidence law problem in a time-frame reflecting the litigation working environment. The problem will be issued via the course Canvas site at 4.00pm on Friday 3 May 2024 (Week 8).

Weighting

30%

Due Date

Answers due 9pm Friday 17 May 2024 (Week 10)

Submission Method

Electronically via *Assignment Submission* portal for 'Problem solving exercise' under Assignments Folder at the Course Canvas site.

Note that is the student's responsibility to keep a copy of each assessment task that is submitted.

Assessment Criteria

- ✓ Advanced and integrated knowledge and understanding of relevant principles and rules of evidence law in the particular type of litigation.
- ✓ Capacity to identify the issues from the facts and then discuss, and/or analyse the relevant concepts of the law of evidence as applicable to demonstrate specialised working knowledge of those concepts, principles and rules.
- ✓ Capacity to formulate alternative legal strategies in discussing or analysing the issues identified.
- ✓ Written communication skills demonstrated: presentation, planning and organisation of answer, clarity and conciseness of expression, spelling, grammar, sentence/paragraph construction and referencing style.

Return Method

By release of marks achieved via Grade Centre at the Course Canvas site.

Feedback Provided

General feedback will be provided when all papers have been graded. Individual feedback will be provided using Grademark in Turnitin. More detailed feedback is available on request.

Assessment 3

Assessment Type

Examination: Formal Examination

Formal Open-book Examination, Written Communication.

Description

The purpose of this final examination is to test students' cumulative and integrated understanding of the principles and rules of evidence law and their ability to apply these rules through effective legal analysis of a range of factual problems. Students demonstrate knowledge and integrated understanding at an advanced level of the principles and rules of evidence used in the process of fact-finding in both civil and criminal litigation through written answers to hypothetical factual problems. They apply lateral thinking to solve legal problems by discussing which rules of evidence operate and are applied in the context of specific factual problems relating to the trial process. They demonstrate a specialised working knowledge and application of the relevant principles and rules of evidence in reaching solutions to factual problems.

Weighting

50%

Due Date

The final examination will be administered as a 3-hour (+ 30 minutes reading time) formal open-book examination on a date to be fixed during the Semester 1 Examination Period 11 – 22 June.

Submission Method	Handwritten in Examination Booklets in Invigilated Examination Room
Assessment Criteria	<ol style="list-style-type: none">1. Knowledge and integrated understanding at an advanced level of the principles and rules of evidence law used in the process of fact-finding in both civil and criminal problem scenarios.2. High level of sophistication in ability to effectively analyse and apply relevant principles and rules of evidence law to prepare and present opinions on complex evidence problem scenarios.3. Ability to interpret the principles and rules of evidence law in the formulation and evaluation of alternative legal strategies.4. Ability to present planned, well organised, accurate, clear and concise written answers in the context of a take-home and time limited examination.
Feedback Provided	No feedback is provided in relation to this assessment item apart from a final course mark. Students can request an appointment with the examiner for individual feedback on their performance in the examination following the release of final course marks.

ADDITIONAL INFORMATION

Grading Scheme

This course is graded as follows:

Range of Marks	Grade	Description
85-100	High Distinction (HD)	Outstanding standard indicating comprehensive knowledge and understanding of the relevant materials; demonstration of an outstanding level of academic achievement; mastery of skills*; and achievement of all assessment objectives.
75-84	Distinction (D)	Excellent standard indicating a very high level of knowledge and understanding of the relevant materials; demonstration of a very high level of academic ability; sound development of skills*; and achievement of all assessment objectives.
65-74	Credit (C)	Good standard indicating a high level of knowledge and understanding of the relevant materials; demonstration of a high level of academic achievement; reasonable development of skills*; and achievement of all learning outcomes.
50-64	Pass (P)	Satisfactory standard indicating an adequate knowledge and understanding of the relevant materials; demonstration of an adequate level of academic achievement; satisfactory development of skills*; and achievement of all learning outcomes.
0-49	Fail (FF)	Failure to satisfactorily achieve learning outcomes. If all compulsory course components are not completed the mark will be zero. A fail grade may also be awarded following disciplinary action.

*Skills are those identified for the purposes of assessment task(s).

Communication Methods

Communication methods used in this course include:

- Canvas Course Site: Students will receive communications via the posting of content, discussion items or announcements.
- Email: Students will receive communications via their student email account.

Course Evaluation

Each year feedback is sought from students and other stakeholders about the courses offered in the University for the purposes of identifying areas of excellence and potential improvement.

Oral Interviews

As part of the evaluation process of any assessment item in this course an oral examination may be conducted. The purpose of the oral examination is to verify the authorship of the

material submitted in response to the assessment task. The oral examination will be conducted in accordance with the principles set out in the [Oral Examination Guidelines](#). In cases where the oral examination reveals the assessment item may not be the student's own work the case will be dealt with under the [Student Conduct Rule](#).

Academic Misconduct

All students are required to meet the academic integrity standards of the University. These standards reinforce the importance of integrity and honesty in an academic environment. Academic Integrity policies apply to all students of the University in all modes of study and in all locations. For the Student Academic Integrity Policy, refer to <https://policies.newcastle.edu.au/document/view-current.php?id=35>

Adverse Circumstances

The University acknowledges the right of students to seek consideration for the impact of allowable adverse circumstances that may affect their performance in assessment item(s). Applications for special consideration due to adverse circumstances will be made using the online Adverse Circumstances system where:

1. the assessment item is a major assessment item; or
2. the assessment item is a minor assessment item and the Course Co-ordinator has specified in the Course Outline that students may apply the online Adverse Circumstances system;
3. you are requesting a change of placement; or
4. the course has a compulsory attendance requirement.

Before applying you must refer to the Adverse Circumstance Affecting Assessment Items Procedure available at:

<https://policies.newcastle.edu.au/document/view-current.php?id=236>

The 'HELP for Students' tab in UoNline contains important information that all students should be familiar with, including various systems, policies and procedures.

There are a variety of pressures on law students, and being able to perform well academically under pressure, without excessive stress will contribute to enhanced outcomes in wellbeing and academic results. Reach out to support services and learn ways to maintain your mental health, deal with stress and common issues like perfectionism, procrastination and anxiety.

To access UON support: <https://www.newcastle.edu.au/current-students/support/personal>

Ph: 4921 6622 or email: counselling@newcastle.edu.au

For support outside of office hours call the University Crisis Support Line on 1300 653 007 or for chat SMS 0488 884 165.

For immediate support contact Lifeline 24/7 on 13 14 11 or <https://www.lifeline.org.au/>

This course outline was approved by the Head of School. No alteration of this course outline is permitted without Head of School approval. If a change is approved, students will be notified and an amended course outline will be provided in the same manner as the original.

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